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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/867,803	05/31/2001	Lawrence J. Choi	1005/006	6606

34060 7590 10/05/2005

MICHAEL N. HAYNES
1341 HUNTERSFIELD CLOSE
KESWICK, VA 22947

EXAMINER

PHAM, KHANH B

ART UNIT PAPER NUMBER

2167

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/867,803

Applicant(s)

CHOI ET AL.

Examiner

Khanh B. Pham

Art Unit

2167

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2, 7 and 8 is/are allowed.
- 6) ☒ Claim(s) 1, 5 and 6 is/are rejected.
- 7) ☒ Claim(s) 3 and 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1, 5-6 are rejected** under 35 U.S.C. 102(b) as being anticipated by McLennan ("Statistics - A Powerful Edge!", 1998), hereinafter "**McLennan**".

As per claim 1, McLennan teaches a computer-assisted method (Page 37 et seq.) for evaluating cluster assignment for an observation comprising:

- "for each of a plurality of observations, obtaining a data set containing no more than one proxy value for each of a plurality of variables, each variable having a plurality of possible values" at page 81, example section.

(McLennan teaches the data set obtained from each of a plurality of observations of battery life for thirty AA size batteries, the data set contains one proxy value for each variables (i.e., the minutes), wherein the possible value for each variables ranges from 360 to 439)

Art Unit: 2167

- “the data set also containing a cluster assignment for the observation, the cluster assignment identifying one cluster from a plurality of clusters” at the table at page 81;

(McLennan assigns the observations into different clusters, based on the proxy values of the variables)

- “for each observation from the plurality of observations, calculating a percent of proxy values for the plurality of variables that equal a mode of that observation’s corresponding cluster’s proxy values for the corresponding variables” at pages 83 and 144;

(The table at page 83 shows the **mode** of the observation’s corresponding cluster is 7 (i.e., “the most frequently observed value”) and the **percent** of proxy values for the plurality of variable that equal a **mode** is 23% as shown in the “Percentage frequency” column.)

- “outputting the percent for each observation” at page 83.

Claims 5 and 6 recite “a computer readable medium containing instruction” and “an apparatus” for performing the method similar to claim 1, and therefore are also rejected by the same rational. McLennan also teaches the uses of computer system and software applications for performing data analysis at page 37 et seq.

Allowable Subject Matter

3. Claims 2, 7-8 are allowed.

Art Unit: 2167

4. Claims 3-4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. The following is a statement of reasons for the indication of allowable subject matter:

Applicant's argument presented in the Appeal Brief date December 3, 2004 regarding claims 2, 7-8 is persuasive. Because applicants have elected to act as their own lexicographer, the examiner therefore relied on Applicant's specification for the definitions of claimed limitation: "estimating a purposeful probability" as defined at page 25, line 14 through page 26, line 1. In view of the specification, prior art of record does not teach the combination of claimed elements including "estimating a purposeful probability" as claimed. Thus, prior art of record neither renders obvious nor anticipates the combination of claimed elements in light of the specification. After a further search and a thorough examination of the present application and in light of the prior art made of record and applicant's specification, claims 2, 7-8 are allowed.

Claims 3-4 have been previously indicated as allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments filed July 19, 2005 have been fully considered but they are not persuasive. The examiner respectfully traverses applicant's arguments.

In response to applicant's argument that the Office Action improperly references a large portion of McLennan in support of the rejections, the examiner respectfully submits that as shown in this Office Action and the previous Office Action, each limitations of the rejected claims has been discussed and the specific portions of the McLennan references, including page number and section within the page, have been cited to support the rejection.

In response to applicant argument that "McLennan at most describes only a single variable" and does not teach "obtaining a data set containing no more than one proxy value for each of a plurality of variable", the examiner respectfully submits that McLennan teaches at page 81 a plurality of variables, each associated with a battery and having a proxy value (i.e., "423, 369..."). Furthermore, in addition to battery's file variables, McLennan also teaches "battery size" variable, with the value "AA" for each battery.

Applicants argued that McLennan does not describe "no more than one proxy value" and relied on the specification at page 55, lines 4-17 for the definition of the phrase. On the contrary, McLennan teaches that each battery's life variable and each battery's size variable has only one value; for example, the first battery has battery' life of 423 minutes and size of "AA". Furthermore, the above portion of the specification cited by applicant does not discuss nor provide any explicit or implicit definition for the phrase "no more than one proxy value" as argued.

In response to applicant's argument that McLennan does not teach "calculating a percent of proxy values for the plurality of variables that equals a mode of that

Art Unit: 2167

observation's corresponding cluster's proxy value for the corresponding variables" because McLennan teaches that "mode is for all the battery life values rather than being a mode of a single cluster's proxy values", the examiner respectfully submits that McLennan clearly teaches at page 83, "a mode of corresponding cluster's proxy values", wherein the cluster (i.e., "class interval") is in the range 360-439.

In light of the foregoing arguments, the 35 U.S.C 102 rejection is hereby sustained.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh B. Pham whose telephone number is (571) 272-

Art Unit: 2167

4116. The examiner can normally be reached on Monday through Friday 7:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Khanh B. Pham
Examiner
Art Unit 2167

KBP
October 3, 2005

A handwritten signature in black ink, appearing to read 'Khanh B. Pham', with a long horizontal flourish underneath.